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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,861	08/31/2001	Steven V. Luong	CISCP044C1	4191
22434	7590	09/06/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			NGUYEN, STEVEN H D	
P.O. BOX 70250			ART UNIT	PAPER NUMBER
OAKLAND, CA 94612-0250			2665	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/944,861	LUONG, STEVEN V.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven HD Nguyen	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 31 August 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 2/20/02

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. Figure 1A, 2A and 2B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 2, 6, 11 and 17 are objected to because of the following informalities:

As claim 2, line 3, ";" and" should be changed to -- . --.

As claim 6, line 1, "means" should be inserted between -- wherein – and – creating --.

As claim 6, lines 2, "the acts of:" should be deleted.

As claim 11, line 6, -- ; -- should be inserted after router.

As claim 17, line 4, -- ; -- should changed to -- . --.

Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,314,105. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claims 1-12 of US Patent 6157641 are encompassed the limitations of claims 1-12 of the present applicant excepting the limitation of the claims of the application comprising an apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to implement an apparatus from a method.

5. Claims 1-8 and 10-12 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13 of U.S. Patent No. 6,314,105. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claims 13-21 of US Patent 6157641 are encompassed the limitations of claims 1-8 and 10-12 of the present applicant excepting the limitation of the claims of the application comprising an apparatus. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to implement an apparatus from a computer readable code.

6. Claim 1 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of U.S. Patent No. 6,314,105. Although the

conflicting claims are not identical, they are not patentably distinct from each other because the limitations claim 22 of US Patent 6157641 are encompassed the limitations of claim 1 of the present applicant excepting the limitation of the claims of the application comprising an apparatus and deleting a function of stopping the transmission of the data packets over the permanent paths when the measured bit rate is above the first predetermined value. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to implement an apparatus from a computer readable code and deleting a function from the claim in order to broaden the claim.

7. Claims 1-25 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,314,105. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of US Patent 6157641 are encompassed the limitations of claims 1-25 of the present applicant excepting whether the measured bit rate is below a second predetermined value and the discussion above (Paragraphs 3-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to deleting a function from the claim in order to broaden the claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven HD Nguyen  
Primary Examiner  
Art Unit 2665  
8/28/05